LIBRARY
SUPREME COURT. U. S.

Office-Supreme Court, U.S.
FILED
DEC 6 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 258

MORRIS H. KRAMER,

Appellant,

—v.—

UNION FREE SCHOOL DISTRICT No. 15, RAYMOND S. BARON, JESSE CESTARI, RALPH J. EDSEL, J. GIBSON FRUIN, HARDON DEIXEL, ELLIOT A. NORWALK, and HAROLD S. ROSENFELD,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK

BRIEF FOR APPELLANT

OSMOND K. FRAENKEL
120 Broadway
New York, N. Y.

BRADLEY B. DAVIS
575 West End Avenue
New York, N. Y.

MELVIN L. WULF
156 Fifth Avenue
New York, N. Y.

MURRAY A. MILLER
305 Broadway
New York, N. Y.

Attorneys for Appellant

INDEX

PAGE

Opinions Below 1

Jurisdiction 2

Statute Involved 2

Question Presented 3

Statement of Facts 3

ARGUMENT:

POINT I—

Section 2012 of the New York State Education Law denies appellant and others similarly situated the equal protection of the laws 4

POINT II—

The impact of Section 2012 of the Education Law affects First Amendment rights 11

CONCLUSION 12

TABLE OF AUTHORITIES

Cases:

Avery v. Midland County, 390 U. S. 474 (1968) 7

Brown v. Board of Education, 347 U. S. 483 (1954) 6

PAGE

Carrington v. Rash, 380 U. S. 89 (1965) 5

Harper v. Virginia Board of Elections, 383 U. S. 663 (1966) 5, 7

Landes v. Town of North Hempstead, 20 N. Y. 2d 417 (1962) 10

Pierce v. Village of Ossining, 68 Civ. 4150 (S. D. N. Y. Nov. 1, 1968), 37 U. S. L. Week 2257 11

Reynolds v. Sims, 377 U. S. 553 (1964) 7, 10

Sailors v. Board of Education, 387 U. S. 105 (1967) 5

Taylor v. Board of Education, 294 F. 2d 36 (2nd Cir. 1961) 8

Wesberry v. Sanders, 376 U. S. 1 (1964) 7

Williams v. Rhodes, 37 U. S. L. Week 4001 (October 15, 1968) 8

Constitutional Provisions:

United States Constitution

Article II, Sec. 1 11

First Amendment 3, 11

Fourteenth Amendment 3, 12

PAGE

Statutes:

28 U. S. C. §1253 2

New York State Education Law:

Section 2012 ..... 2, 3, 4, 6, 11, 12

Section 2021 10

Section 2022 10

Section 2040 10

Section 2041 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 258

MORRIS H. KRAMER,

Appellant,

—v.—

UNION FREE SCHOOL DISTRICT No. 15, RAYMOND S. BARON, JESSE CESTARI, RALPH J. EDSEL, J. GIBSON FRUIN, HARDON DEIXEL, ELLIOT A. NORWALK, and HAROLD S. ROSENFELD,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK

BRIEF FOR APPELLANT

Opinions Below

Kramer v. *Union Free School District No. 15, etc.*, 282 F. Supp. 70 (E. D. N. Y. 1968); *Kramer* v. *Union Free School District No. 15*, 379 F. 2d 491 (2d Cir. 1967); *Kramer* v. *Union Free School District No. 15*, 259 F. Supp. 164 (E. D. N. Y. 1966). The opinions are set out in the Appendix, pp. 31, 18, and 11, respectively.

Jurisdiction

Jurisdiction of this Court to review the determination of the three judge statutory court of the United States District Court for the Eastern District of New York rests upon 28 U. S. C. Sec. 1253. The judgment was entered by the three judge court of the United States District Court on March 14, 1968; notice of appeal was filed on April 4, 1968; probable jurisdiction was noted on October 14, 1968.

Statute Involved

Education Law of the State of New York, Section 2012

A person shall be entitled to vote at any school meeting for the election of school district officers, and upon all other matters which may be brought before such meeting, who is: 1. A citizen of the United States. 2. Twenty-one years of age. 3. A resident within the district for a period of thirty days next preceding the meeting at which he offers to vote; and who in addition thereto possesses one of the following three qualifications:

(a) Owns or is the spouse of an owner, leases or hires, or is in the possession under a contract of purchase of, [or is the spouse of one who leases, hires or is in the possession under a contract of purchase of][1] real property, in such district liable to taxation for school purposes, but the occupation of real property by a person as lodger or boarder shall not entitle such person to vote.

---

[1] Bracketed material added by Laws of 1968, Chapter 730, effective June 16, 1968.

(b) Is the parent of a child of school age, provided such a child shall have attended the district school in the district in which the meeting is held for a period of at least eight weeks during the year preceding such school meeting, or

(c) Not being the parent, has permanently residing with him a child of school age who shall have attended the district school for a period of at least eight weeks during the year preceding such meeting.

No person shall be deemed to be ineligible to vote at any such meeting by reason of sex, who has the other qualifications required by this section.

Question Presented

Whether Section 2012 of the New York Education Law, which denies appellant his right to vote in School District Elections, violates the Equal Protection Clause of the Fourteenth Amendment, and the First Amendment as made applicable to the states through the Due Process Clause of the Fourteenth Amendment.

Statement of Facts

Morris H. Kramer is a 31 year old stockbroker who resides in Atlantic Beach, New York, which is in the confines of Union Free School District No. 15. For over 20 years he has resided there in the home of his parents. He is a citizen of the United States and has voted in federal and state elections since 1959.

Mr. Kramer attempted to register to vote on April 25, 1965, for the forthcoming school district election in Union

Free School District No. 15. However, his application was rejected by appellees because he admittedly failed to meet the additional voting qualifications of Section 2012(3)(a), (b) or (c) of the New York State Education Law.

Thereafter appellant instituted this proceeding to declare Section 2012 of the Education Law of the State of New York unconstitutional and to restrain its enforcement. After intermediate proceedings which resulted in the second and third opinions referred to above, a three judge statutory court granted appellees' motion to dismiss the complaint, Judge Weinstein dissenting. Notice of appeal having been duly filed, this Court noted probable jurisdiction on October 14, 1968.

ARGUMENT

POINT I

Section 2012 of the New York State Education Law denies appellant and others similarly situated the equal protection of the laws.

Both the United States and the New York State Constitutions set forth certain age, residence and residency requirements for voting, none of which are challenged by appellant and all of which appellant has fulfilled for a decade. However, the statute in dispute, Section 2012 of the New York State Education Law which sets forth qualifications for voting in elections for school board members and school district budgets goes beyond these limitations and disenfranchises all but three groups of persons: (i) owners of property in the school district subject to

taxes and their spouses; (ii) apartment leaseholders,[2] and (iii) parents or guardians of children attending district schools.

By these provisions, all or some of the following groups of voters, not property owners or tenants are disenfranchised: (i) senior citizens and others living with children or relatives; (ii) young adults (such as appellant) residing in family homes; (iii) clergy, military personnel, and others living on tax exempt property; (iv) boarders and lodgers; (v) parents of children who have not attended a district school for the period specified in the law either because the children were below school age or because the children attended parochial or private schools or public schools outside the district.

In *Carrington* v. *Rash*, 380 U. S. 89 (1965), the Court applied the equal protection clause to a state's restriction on the right of a resident to vote in any election merely because he was in the armed services. In *Harper* v. *Virginia Board of Elections*, 383 U. S. 663 (1966), the principle was extended to outlawing the poll tax. Here the Court is called upon to determine whether this principle is applicable to voting in a school election and whether the qualifications established by New York are defensible.

The problem of the selection of school boards came before the Court in *Sailors* v. *Board of Education*, 387 U. S. 105 (1967). There, elected officials selected the members of the body that controlled the county school system. This was upheld on the theory that a state could provide that such "non-legislative" officials could be appointed. But the

---

[2] And their spouses, effective June 16, 1968.

Court expressly noted (p. 111) that no "constitutional complaint" had been raised with respect to the election itself.[3]

Here, however, no such quasi-appointive method was used. New York law provides for direct election of members of Union Free School District No. 15, and the case deals directly with such an election. Appellant was denied the right to participate because, although an adult resident of the district and a citizen otherwise qualified to vote, he did not come within the categories set forth in Election Law §2012: He was neither owner or lessee of property in the district or the spouse of one, nor the parent or custodian of a child attending school in the district.

As was noted at an earlier stage of this case:

> "It may be true, as the appellees argue, that the state need not permit its citizens to vote on the matter with which §2012 is concerned. See *Sailors* v. *Board of Education, supra.* However, as the Supreme Court has held 'Once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the equal protection clause of the Fourteenth Amendment.' *Harper* v. *Virginia Board of Elections,* 383 U. S. 663, 665 (1966)." 379 F. 2d 491, 494; App., p. 21.

The majority of the court below upheld the classification scheme of §2012 on the theory that it was reasonable

---

[3] Appellees in their Motion to Affirm suggest that there is a distinction between the small unit of government at issue here and "a general government unit" (Motion to Affirm, pp. 35-38) which will support the restrictions on the right to vote contained in §2012. But the equal protection clause recognizes no such distinction, see *Brown* v. *Board of Education,* 347 U. S. 483 (1954). If it did, States which are dissatisfied with this Court's decisions relating to racial segregation or legislative apportionment, could evade them by fragmenting their general legislative functions into specific functions controlled by separate bodies.

for the state to restrict the right to vote to those directly affected by school taxes and school policies. Thus taxpayers and parents, all qualified under the law, were considered to have so preeminent an interest as to justify exclusion of other residents.

The fallacy of that approach was exposed in the dissent below, where Judge Weinstein pointed out that there were other vital considerations which require participation by all residents qualified to vote in general elections. He noted the interest of all such persons in the cost of education, an increasingly large part of which is now borne by county, state, and federal governments, to the support of which appellant, as well as other adult residents now excluded from school elections, contribute. He noted also the impact of taxes on local prices for goods and services. He underscored the importance to all persons in a community of the policies a local school board might adopt with regard to school matters, particularly to such things as libraries, adult education, recreational facilities, and entertainments.

We submit that his arguments are unanswerable and that it will not do to say, as do the majority, that there was a rational basis for the classification. This Court has repeatedly said that where voting rights are involved any restrictions must be closely scrutinized: *Reynolds* v. *Sims,* 377 U. S. 553, 562 (1964); *Wesberry* v. *Sanders,* 376 U. S. 1, 17 (1964); *Harper* v. *Virginia Board of Elections, supra.*

What was said by Mr. Justice White in *Avery* v. *Midland County,* 390 U. S. 474, 481 (1968) is applicable here:

> "• • • In a word, institutions of local government have always been a major aspect of our system, and

> their responsible and responsive operation is today of increasing importance to the quality of life of more and more of our citizens. We therefore see little difference, in terms of the application of the Equal Protection Clause and of the principles of *Reynolds* v. *Sims,* between the exercise of state power through legislatures and its exercise by elected officials in the cities, towns, and counties."

The crucial question, of course, is whether the so-called "interest" element relied upon by the majority can constitutionally control the choice of electors. As the Court said in *Williams* v. *Rhodes,* 37 U. S. L. Week 4001, 4003 (October 15, 1968):

> "In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances of the law, the interests which the State claims to be protecting and interests of those who are disadvantaged by the classification."

Under that standard the balance must fall against the state here. For the interest of those disadvantaged clearly outweighs any possible interest the state might have in restricting voting as it has done.

The decision below rests upon the narrowest possible basis, namely, financial interest of taxpayers and direct interest of parents of children attending the schools, leaving out of account altogether the great interest of all the other persons in the community in the conduct of its schools. See, e.g., *Taylor* v. *Board of Education,* 294 F. 2d 36 (2nd Cir. 1961). Particularly in today's turbulent times the character of education and its impact on young children

attending schools is of the greatest importance to all persons in the community. No one who has lived through the recent events which have erupted in some of our colleges and high schools in various parts of the country can close his eyes to this aspect of the problem.

This general interest of the community in school matters is perhaps most dramatically illustrated by what has happened in the City of New York in the fall of 1968 where a strike of teachers, because of conflicts with the city-wide and certain local boards, has seriously affected everyone. Indeed, the racial tension generated by this strike will have far-reaching repercussions. The decisions taken by local boards in various parts of the country may have grave consequences to the entire population. Consequently, the election of the members of such boards should be by the widest possible electorate in each community.

Judge Weinstein in his dissent (282 F. Supp. at 76; App., pp. 44-45) eloquently dealt with one aspect of this problem:

> "Headlines daily furnish examples of the deep passions stirred by debate on control of educational policy. One of the substantial pressures on peaceful race relations has come from the problems created by integration of schools. In the North as well as the South, people have at times abandoned the ballot and the courts and taken to the streets in an attempt to settle these problems. The right to vote in school board elections is the right to participate in attempts at controlling deep currents in our society which can nurture or destroy."

He further pointed out that appellant is affected by the amount of the school tax because both federal and state

governments pay part of the local educational expenses and therefore influence the amount of income tax which appellant has to pay. He noted that residents were also financially affected because of the circumstance that the amount of taxes paid by the people of the community affects the price of goods sold and services rendered there. But even if we make the completely hypothetical assumption that appellant had no interest whatsoever in the actions taken by his local school board, he still would have the right of franchise because under the equal protection clause, and indeed under the republican form of government clause, voting is a matter of right and not of interest. It is "the essence of a democratic society." *Reynolds* v. *Sims, supra,* at 555. Quite simply, under the equal protection clause the right to vote may not be limited beyond reasonable citizenship, age, residency and literacy requirements, all of which are met by appellant.

It is also important to bear in mind that only qualified voters can take part in school district meetings which are vested with a wide range of powers which effect the community at large including designating schoolhouse sites and setting taxes (Education Law §§2021, 2022), providing for the education of students outside the district (Education Law §2040), and providing for the education of children of migrant laborers (Education Law §2040-a) and of children from outside the district (Education Law §2041).

Finally, property qualifications have increasingly been discredited as prerequisites for the exercise of the right to vote. Thus, the New York Court of Appeals in *Landes* v. *Town of North Hempstead,* 20 N. Y. 2d 417 (1962), voided a requirement of property ownership for the purpose of holding office in a town. A three-judge district court in the

Southern District of New York unanimously struck down a provision of New York's Village Law which restricted voting on certain village matters to property owners. *Pierce* v. *Village of Ossining,* 68 Civ. 4150 (S. D. N. Y. Nov. 1, 1968), 37 U. S. L. Week 2257. It is interesting, also, that the proposed New York State constitution submitted to (but rejected by) the voters at the general election of 1967 would have eliminated all of the restrictive requirements of Section 2012 (see proposed Constitution, Art. II, Sec. 1).

POINT II

The impact of Section 2012 of the Education Law affects First Amendment rights.

This aspect of the case, which is included in the Question Presented in the Jurisdictional Statement (p. 2) and in the Question Presented herein, was briefly discussed by Judge Weinstein (282 F. Supp. at 85; App., pp. 62-63). School elections are often a focal point in local communities and afford the most immediate method whereby points of view can be implemented. As Judge Weinstein pointed out, parents who send their children to parochial or private schools are excluded from this community activity, as are all of the other persons disqualified by the restrictive voting.

CONCLUSION

It is submitted that the decision appealed from should be reversed and Section 2012 of the New York State Education Law held unconstitutional in violation of the Equal Protection and Due Process Clauses of the Fourteenth Amendment, and that a decree should be entered restraining appellees from enforcing this provision.

Respectfully submitted,

OSMOND K. FRAENKEL
120 Broadway
New York, N. Y.

BRADLEY B. DAVIS
575 West End Avenue
New York, N. Y.

MELVIN L. WULF
156 Fifth Avenue
New York, N. Y.

MURRAY A. MILLER
305 Broadway
New York, N. Y.

Attorneys for Appellant

December 1968